ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOHN B. ROBBINS, JUDGE

DIVISION I

CACR 06-925

APRIL 25, 2007

JAMES MALCOM JONES APPELLANT	APPEAL FROM THE CRAWFORD COUNTY CIRCUIT COURT [NO. CR-05-239]
V.	HONORABLE GARY RAY COTTRELL, JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED

Appellant James Malcom Jones appeals his drug-related convictions as found by a jury in Crawford County Circuit Court. His sole argument on appeal is that the trial court clearly erred in denying his motion to suppress the evidence gained after a stop of his vehicle and a search of the vehicle pursuant to his consent to search. He does not contest the legality of the stop or the search per se. Rather, he argues that the Arkansas Constitution and Rules of Criminal Procedure should require law enforcement to inform the person giving consent to search a vehicle that he has the right to refuse or limit his consent, in line with a similar requirement regarding a search of a residence. We affirm the denial of his motion to suppress.

In reviewing the denial of a motion to suppress evidence, this court conducts a de novo review based on the totality of the circumstances. *See Dickinson v. State*, 367 Ark.102, ___ S.W.3d ___ (2006). This court reverses only if the circuit court's ruling denying a motion to suppress is clearly against the preponderance of the evidence. *Id.*

Arkansas Rule of Criminal Procedure 11.1(a) provides that an officer may conduct searches and seizures without a warrant or other color of authority if consent is given to the search. The State bears the burden to prove by clear and convincing evidence that consent was given freely and voluntarily, without actual or implied duress or coercion. Ark. R. Crim. P. 11.1(b). In *State v. Brown*, 356 Ark. 460, 156 S.W.3d 722 (2004), our supreme court held that under Article 2, § 15 of the Arkansas Constitution, officers who utilize the knock-and-talk procedure are required to inform a home dweller that he or she has the right to refuse consent to the search. *Brown*, 356 Ark. at 474, 156 S.W.3d at 732. The *Brown* opinion specifically noted that with regard to motor vehicles, it was especially appropriate to follow Fourth Amendment interpretations because of the difficulty in balancing the interests and setting rules for search and seizure of automobiles. *Id.* The *Brown* court held that the search of a home is "altogether different and which invokes Arkansas's longstanding and steadfast adherence to the sanctity of the home and protection against unreasonable government intrusions." *Id.* at 468. Following the *Brown* decision, the supreme court issued a per curiam opinion that amended Arkansas Rule of Criminal Procedure 11.1, effective January 1, 2005, to add subsections (b) and (c). The Rule reads:

> **Rule 11.1. Authority to search and seize pursuant to consent**.
>
> (a) An officer may conduct searches and make seizures without a search warrant or other color of authority if consent is given to the search.
> (b) The state has the burden of proving by clear and positive evidence that consent to a search was freely and voluntarily given and that there was no actual or implied duress or coercion.
> (c) A search of a dwelling based on consent shall not be valid under this rule unless the person giving the consent was advised of the right to refuse consent. For purposes of this subsection, a "dwelling" means a building or other structure where any person lives or which is customarily used for overnight accommodation of persons. Each unit of a structure divided into separately occupied units is itself a dwelling.

See also In Re: Rules of Criminal Procedure, Rule 11.1, __ Ark. Appx. __ (Nov. 18, 2004). While the new subsection (b) was merely a codification of the burden of proof announced in supreme court

cases dating back to 1978, subsection (c) was a new statement of the law. *See Reporter's Notes* to Ark. R. Crim. P. 11.1.

In *Welch v. State*, 364 Ark. 324, __ S.W.3d __ (2005), appellant Welch urged the supreme court to extend the *Brown* holding to the search of a vehicle. The supreme court rejected the request to extend the rule, noting that the *Brown* holding was specific to the search of a home.

Appellant states in his brief that he "hereby requests that this Court extend the *Brown* rationale to searches of vehicles." He acknowledges that this would be greater protection than that available under the United States Constitution. Appellant urges that because the Arkansas Constitution has been interpreted more broadly for the protection of Arkansas citizens and their rights, this should be the holding of our court today.

We do not reach this issue because appellant did not make this argument to the trial court. Therefore, it is not preserved for appellate review. *See Oliver v. State*, 322 Ark. 8, 907 S.W.2d 706 (1995); *Williams v. State*, 53 Ark. App. 63, 918 S.W.2d 209 (1996).

Moreover, were we to reach the merits of this argument, we would affirm because our supreme court recently rejected the specific argument being made today. *See Welch*, *supra*. We are duty-bound to apply supreme court precedent and cannot overrule it. *Compare Brewer v. State*, 68 Ark App. 216, 6 S.W.3d 124 (1999). If any extension is to be made, that is left to the highest court in the State of Arkansas.

For the foregoing reasons, we affirm.

GLOVER and HEFFLEY, JJ., agree.